

2009 DRAFTING REQUEST

Bill

Received: **12/18/2008**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Steinmetz**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **Correctional System - com crctns**
Correctional System - misc

Extra Copies:

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Carbon copy (CC:) to:

Pre Topic:

DOA:.....Steinmetz, BB0311 -

Topic:

Changes to statute requiring DOC to track sex offenders via GPS

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	chanaman 12/18/2008 chanaman 01/09/2009	kfollett 12/19/2008 kfollett 01/11/2009	rschluet 12/22/2008	_____	sbasford 12/22/2008		S&L
/P2	chanaman 02/05/2009	kfollett 02/05/2009	jfrantze 01/12/2009	_____	sbasford 01/12/2009		S&L
/P3			jfrantze 02/05/2009	_____	sbasford 02/05/2009		S&L

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/P2		1P3kf 2/50	jfrantze 01/12/2009	<u> </u> <u> </u> <u> </u> <u> </u>	sbasford 01/12/2009		S&L

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JG/Rg
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SENTENCING POLICY SECTION
s. 301.48 Global Positioning System
Tracking
Petition for Terminating GPS and
Use of Passive GPS Technology

I. Current law (attached).

A. See s. 301.48(6) [Offender Petition To Terminate Lifetime Tracking]

1. Main points:

- i. Petition is to the circuit court for the county in which the person was convicted.
- ii. The person may not file a petition requesting termination of lifetime tracking earlier than 20 years after the date on which the lifetime tracking began.
- iii. S. 980 offenders are excluded from filing any petition for lifetime GPS termination.
- iv. The court after receiving the petition shall do whichever of the following is applicable:
 - Shall have the person examined by a person who is either a physician or psychologist licensed under chapter 455 and who is approved by the court. The physician or psychologist shall prepare a report for the court that includes his/her opinion on whether the person petitioning for termination of lifetime tracking is a danger to the public.
 - The court will notify the department of the person's petition. The department may prepare and submit to the court a report concerning the person's conduct while on lifetime tracking and an opinion as to whether lifetime tracking of the person is still necessary to protect the public.
 - The court will hold a hearing and rule on the petition.

B. See s. 301.48(7) [Department's Petition To Terminate Lifetime Tracking].

1. Main points:

- i. The department may file a petition requesting that a person's lifetime tracking be terminated if the person is permanently physically incapacitated. The petition shall include affidavits from two (2) physicians that explain the nature of the person's incapacitation.
- ii. The court will notify the district attorney responsible for prosecuting the serious sex offense that was the basis for the order of lifetime tracking.

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- iii. The court may order the person to a physician approved by the court.
- iv. The court hears the matter and rules.

II. Proposals

- A. Draft language that would provide the department with the authority to determine the level of GPS tracking. Currently, passive GPS can only be utilized for offenders who complete their sentence (probation, parole or extended supervision (see s. 301.48(2m))).

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3. The most recent date on which the information under s. 301.45 was updated.

4. Any other information concerning the person that the department or the police chief or sheriff determines is appropriate.

(bm) The department shall provide on the Internet site required under sub. (5n) the following information concerning persons registered under s. 301.45:

1. If the person is a sexually violent person, as defined in s. 980.01 (7), a notice, written in red letters, of that status.

2. A current color photograph of the person, if available, and a physical description including sex, race, height, weight, eye color, and hair color.

3. The person's name and home address.

4. Whether the person has responded to the last contact letter from the department.

5. The crime committed for which the person must register.

6. Any conditions of the person's supervised release, except for any condition that may reveal the identity of the victim of the crime that the person committed for which he or she must register.

7. The date, time, and place of any scheduled hearings for supervised release or discharge under ch. 980.

8. The name and court of the judge who authorized supervised release or discharge for the person.

9. The most recent date on which the information was updated.

(c) The department may not provide any of the following under par. (a) or (bm):

1. Any information concerning a child who is required to register under s. 301.45.

2. If the person required to register under s. 301.45 is an adult, any information concerning a juvenile proceeding in which the person was involved.

(5n) INTERNET ACCESS. (a) No later than June 1, 2001, the department shall provide access to information concerning persons registered under s. 301.45 by creating and maintaining an Internet site and by any other means that the department determines is appropriate. The information provided through the Internet site shall be organized in a manner that allows a person using the Internet site to obtain the information that the department is required to provide the person under sub. (2), (2m), (3), (4) or (5) and other information that the department determines is necessary to protect the public. The department shall keep the information provided on the Internet site and in other means used to allow access to the information secure against unauthorized alteration.

(b) For Internet access provided to law enforcement agencies under this subsection, the department shall provide the means for a law enforcement agency to easily identify changes that have occurred in the residence, employment, or place of school attendance of a person registered under s. 301.45.

(6) PERIOD OF NOTIFICATION OF AND ACCESS TO INFORMATION. (a) Except as provided in par. (b), the department or an agency with jurisdiction may provide notice of or access to information under subs. (2) to (5) concerning a person registered under s. 301.45 only during the period under s. 301.45 (5) or (5m) for which the person is required to comply with s. 301.45.

(b) The department or an agency with jurisdiction may provide access to any information collected under s. 301.45, regardless of whether the person is still required to be registered, to a law enforcement agency for law enforcement purposes.

(7) IMMUNITY. A person acting under this section is immune from civil liability for any good faith act or omission regarding the release of information authorized under this section. The immunity under this subsection does not extend to a person whose act or omission constitutes gross negligence or involves reckless, wanton or intentional misconduct.

(8) RULES. The department shall promulgate rules necessary to carry out its duties under this section.

(9) EFFECT ON OPEN RECORDS REQUESTS. This section does not prohibit the department from providing to a person, in response to that person's request under s. 19.35 to inspect or copy records of the department, information that is contained in the sex offender registry under s. 301.45 concerning a person who is in the custody or under the supervision of the department if that information is also contained in records of the department, other than the sex offender registry, that are subject to inspection or copying under s. 19.35.

History: 1995 a. 410; 1997 a. 6, 27, 130, 181, 237, 283; 1999 a. 89; 2001 a. 16; 2003 a. 188; 2005 a. 5, 431; 2007 a. 20 ss. 3132r, 3133, 9121 (6) (a).

Cross Reference: See also s. DOC 332.01, Wis. adm. code.
Sections 301.45 and 301.46 do not occupy the field in regulating the dissemination of sex offender registration information and do not prohibit a prohibition agent from requiring a probationer to inform the probationer's immediate neighbors of his or her status as a convicted sex offender, which was not unreasonable. *State ex rel. Kaminski v. Schwarz*, 2001 WI 94, 245 Wis. 2d 310, 630 N.W.2d 164, 59-3040.

301.47 Sex offender name changes prohibited. (1) In this section, "sex offender" means a person who is subject to s. 301.45 (1g) but does not include a person who, as a result of a proceeding under s. 301.45 (1m), is not required to comply with the reporting requirements of s. 301.45.

(2) A sex offender may not do any of the following before he or she is released, under s. 301.45 (5) or (5m), from the reporting requirements of s. 301.45:

(a) Change his or her name.

(3) Whoever intentionally violates sub. (2) is subject to the following penalties:

(a) Except as provided in par. (b), the person is guilty of a Class H felony.

(b) The person may be fined not more than \$10,000 or imprisoned for not more than 9 months or both if all of the following apply:

1. The person was ordered under s. 51.20 (13) (ct) 1m., 938.34 (15m) (am), 938.345 (3), 971.17 (1m) (b) 1m., or 973.048 (1m) to comply with the reporting requirements under s. 301.45 based on a finding that he or she committed or solicited, conspired, or attempted to commit a misdemeanor.

2. The person was not convicted of another offense under this section before committing the present violation.

(4) The department shall make a reasonable attempt to notify each person required to comply with the reporting requirements under s. 301.45 of the prohibition in sub. (2), but neither the department's failure to make such an attempt nor the department's failure to notify a person of that prohibition is a defense to a prosecution under this section.

History: 2003 a. 52, 320.

301.48 Global positioning system tracking and residency requirement for certain sex offenders. (1) DEFINITIONS. In this section:

(a) "Exclusion zone" means a zone in which a person who is tracked using a global positioning system tracking device is prohibited from entering except for purposes of traveling through it to get to another destination.

(b) "Global positioning system tracking" means tracking using a system that actively monitors and identifies a person's location and timely reports or records the person's presence near or at a crime scene or in an exclusion zone or the person's departure from an inclusion zone. "Global positioning system tracking" includes comparable technology.

(c) "Inclusion zone" means a zone in which a person who is tracked using a global positioning system tracking device is prohibited from leaving.

(cm) "Level 1 child sex offense" means a violation of s. 948.02 or 948.025 in which any of the following occurs:

1. The actor has sexual contact or sexual intercourse with an individual who is not a relative of the actor and who has not attained the age of 13 years and causes great bodily harm, as defined in s. 939.22 (14), to the individual.

Text from the 2005-06 Wis. Stats. database updated by the Revisor of Statutes. Only printed statutes are certified under s. 35.18 (2), stats. Statutory changes effective prior to 1-2-08 are printed as if currently in effect. Statutory changes effective on or after 1-2-08 are designated by NOTES. Report errors at (608) 266-2011, FAX 264-6976, <http://www.legis.wisconsin.gov/statelibrary>

2. The actor has sexual intercourse with an individual who is not a relative of the actor and who has not attained the age of 12 years.

(cn) "Level 2 child sex offense" means a violation of s. 948.02 or 948.025 in which any of the following occurs:

1. The actor has sexual intercourse, by use or threat of force or violence, with an individual who is not a relative of the actor and who has not attained the age of 16 years.

2. The actor has sexual contact, by use or threat of force or violence, with an individual who has not attained the age of 16 years and who is not a relative of the actor, and the actor is at least 18 years of age when the sexual contact occurs.

(d) "Lifetime tracking" means global positioning system tracking that is required for a person for the remainder of the person's life or until terminated under sub. (2m), sub. (6), if applicable, or sub. (7) or (7m). "Lifetime tracking" does not include global positioning system tracking under sub. (2) (d), regardless of how long it is required.

(dm) "Passive positioning system tracking" means tracking using a system that monitors, identifies, and records a person's location.

(dr) "Relative" means a son, daughter, brother, sister, first cousin, 2nd cousin, nephew, niece, grandchild, or great grandchild, or any other person related by blood, marriage, or adoption.

(e) "Serious child sex offense" means a level 1 child sex offense or a level 2 child sex offense.

(f) "Sex offense" means any of the following:

1. A sex offense, as defined in s. 301.45 (1d) (b).

2. A crime under federal law or the law of any state that is comparable to a crime described in subd. 1.

(fm) "Sexual contact" has the meaning given in s. 948.01 (5).

(g) "Sexual intercourse" means vulgar penetration as well as cunnilingus, fellatio, or anal intercourse between persons or any intrusion of any inanimate object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

(2) WHO IS COVERED. (a) Except as provided in sub. (2m), the department shall maintain lifetime tracking of a person if any of the following occurs with respect to the person on or after January 1, 2008:

1. A court places the person on probation for committing a level 1 child sex offense.

1m. The person is convicted for committing a level 2 child sex offense and the court places the person on probation for committing the level 2 child sex offense.

2. The department releases the person to extended supervision or parole while the person is serving a sentence for committing a level 1 child sex offense.

2m. The person is convicted for committing a level 2 child sex offense and the department releases the person to extended supervision or parole while the person is serving the sentence for committing the level 2 child sex offense.

3. The department releases the person from prison upon the completion of a sentence imposed for a level 1 child sex offense.

3m. The person is convicted for committing a level 2 child sex offense and the department releases the person from prison upon the completion of the sentence imposed for the level 2 child sex offense.

4. A court that found the person not guilty of a serious child sex offense by reason of mental disease or mental defect places the person on conditional release.

5. A court that found the person not guilty of a serious child sex offense by reason of mental disease or mental defect discharges the person under s. 971.17 (6). This subdivision does not apply if the person was on conditional release immediately before being discharged.

6. The court places a person on lifetime supervision under s. 939.615 for committing a serious child sex offense and the person is released from prison.

7. A police chief or a sheriff receives a notification under s. 301.46 (2m) (am) regarding the person.

8. The department makes a determination under sub. (2g) that global positioning system tracking is appropriate for the person.

(b) The department shall maintain lifetime tracking of a person if any of the following occurs with respect to the person on or after January 1, 2008:

1. A court places the person on supervised release under s. 980.03 (6m).

2. A court discharges the person under s. 980.09 (4). This subdivision does not apply if the person was on supervised release immediately before being discharged.

3. The department of health services places the person on parole or discharges the person under ch. 975. This subdivision does not apply unless the person's commitment was based on his or her commission of a serious child sex offense.

NOTE: Subd. 3, as shown as amended eff. 7-1-03 by 2007 Wis. Act 29, section 9121 (6) (a). Prior to 7-1-03 it reads:

3. The department of health and family services places the person on parole or discharges the person under ch. 975. This subdivision does not apply unless the person's commitment was based on his or her commission of a serious child sex offense.

(d) If, on or after January 1, 2008, a person is being placed on probation, extended supervision, parole, or lifetime supervision for committing a sex offense and par. (a) or (b) does not apply, the department may have the person tracked using a global positioning system tracking device as a condition of the person's probation, extended supervision, parole, or lifetime supervision.

(2g) DEPARTMENT DETERMINATION. If a person who committed a serious child sex offense, or a person under supervision under the interstate corrections compact for a serious child sex offense, is not subject to lifetime tracking under sub. (2), the department shall assess the person's risk using a standard risk assessment instrument to determine if global positioning system tracking is appropriate for the person.

(2m) PASSIVE POSITIONING SYSTEM TRACKING. If a person who is subject to lifetime tracking under sub. (2) (a) 1., 1m., 2., 2m., 3., or 3m. completes his or her sentence, including any probation, parole, or extended supervision, the department may use passive positioning system tracking instead of maintaining lifetime tracking.

(3) FUNCTIONS AND OPERATION OF TRACKING PROGRAM. (a) Except as provided in sub. (2m), the department shall implement a continuous global positioning tracking system to electronically monitor the whereabouts of persons who are subject to this section. The system shall do all of the following:

1. Use field monitoring equipment that supports cellular communications with as large a coverage area as possible and shall automatically provide instantaneous information regarding the whereabouts of a person who is being monitored, including information regarding the person's presence in an exclusion zone established under par. (c) or absence from an inclusion zone established under par. (c).

2. Use land line communications equipment to transmit information regarding the location of persons who are subject to this section when they are in areas in which no commercial cellular service is available.

3. Immediately alert the department and the local law enforcement agency having jurisdiction over the exclusion or inclusion zone if the person stays in any exclusion zone for any longer period than the time needed to travel through the zone to get to another destination or if the person leaves any inclusion zone.

(b) The department shall contract with a vendor using a competitive process under s. 16.75 to provide staff in this state to install, remove, and maintain equipment related to global posi-

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tioning system tracking and passive positioning system tracking for purposes of this section. The term of the contract may not exceed 3 years.

(c) For each person who is subject to global positioning system tracking under this section, the department shall create individualized exclusion and inclusion zones for the person, if necessary to protect public safety. In creating exclusion zones, the department shall focus on areas where children congregate, with perimeters of 100 to 250 feet, and on areas where the person has been prohibited from going as a condition of probation, extended supervision, parole, conditional release, supervised release, or lifetime supervision. In creating inclusion zones for a person on supervised release, the department shall consider s. 980.03 (9).

(d) If a person who is on supervised release or conditional release is being tracked, the department shall notify the department of health services, upon request, of any tracking information for the person under any of the following circumstances:

NOTE: Par. (d) is shown as amended eff. 7-1-03 by 2007 Wis. Act 20, section 9121 (6) (a). Prior to 7-1-03 it reads:

(d) If a person who is on supervised release or conditional release is being tracked, the department shall notify the department of health and family services, upon request, of any tracking information for the person under any of the following circumstances:

1. The department of corrections has been alerted under par. (a) 3. that the person being tracked has improperly stayed in an exclusion zone or improperly left an inclusion zone.

2. The person being tracked fails to make a payment to the department under sub. (4) (b).

(4) COSTS. (a) The department shall determine all of the following for each person tracked:

1. The cost of global positioning system tracking or passive positioning system tracking for the person.

2. How much of the cost under subd. 1. the person is able to pay based on the factors listed in par. (d).

(b) If required by the department, a person who is subject to global positioning system tracking or passive positioning system tracking shall pay for the cost of tracking up to the amount calculated for the person under par. (a) 2. The department shall collect moneys paid by the person under this paragraph and credit those moneys to the appropriation under s. 20.410 (1) (gk).

(c) The department of health services shall pay for the cost of tracking a person to whom sub. (2) (a) 4. or 5. or (b) applies while the person is on conditional release or supervised release to the extent that the cost is not covered by payments made by the person under par. (b).

NOTE: Par. (c) is shown as amended eff. 7-1-03 by 2007 Wis. Act 20, section 9121 (6) (a). Prior to 7-1-03 it reads:

(c) The department of health and family services shall pay for the cost of tracking a person to whom sub. (2) (a) 4. or 5. or (b) applies while the person is on conditional release or supervised release to the extent that the cost is not covered by payments made by the person under par. (b).

(d) In determining how much of the costs the person is able to pay, the department may consider the following:

1. The person's financial resources.

2. The present and future earning ability of the person.

3. The needs and earning ability of the person's dependents.

4. Any other costs that the person is required to pay in conjunction with his or her supervision by the department or the department of health services.

NOTE: Subd. 4. is shown as amended eff. 7-1-03 by 2007 Wis. Act 20, section 9121 (6) (a). Prior to 7-1-03 it reads:

4. Any other costs that the person is required to pay in conjunction with his or her supervision by the department or the department of health and family services.

5. Any other factors that the department considers appropriate.

(6) OFFENDER'S PETITION TO TERMINATE LIFETIME TRACKING.

(a) Subject to par. (b), a person who is subject to lifetime tracking may file a petition requesting that lifetime tracking be terminated. A person shall file a petition requesting termination of lifetime tracking with the circuit court for the county in which the person

was convicted or found not guilty or not responsible by reason of mental disease or defect.

(b) 1. A person may not file a petition requesting termination of lifetime tracking if he or she has been convicted of a crime that was committed during the period of lifetime tracking.

2. A person may not file a petition requesting termination of lifetime tracking earlier than 20 years after the date on which the period of lifetime tracking began. If a person files a petition requesting termination of lifetime tracking at any time earlier than 20 years after the date on which the period of lifetime tracking began, the court shall deny the petition without a hearing.

3. A person described in sub. (2) (b) may not file a petition requesting termination of lifetime tracking.

(c) Upon receiving a petition requesting termination of lifetime tracking, the court shall send a copy of the petition to the district attorney responsible for prosecuting the serious sex offense that was the basis for the order of lifetime tracking. Upon receiving the copy of the petition, the district attorney shall conduct a criminal history record search to determine whether the person has been convicted of a criminal offense that was committed during the period of lifetime tracking. No later than 30 days after the date on which he or she receives the copy of the petition, the district attorney shall report the results of the criminal history record search to the court and may provide a written response to the petition.

(d) After reviewing a report submitted under par. (c) concerning the results of a criminal history record search, the court shall do whichever of the following is applicable:

1. If the report indicates that the person filing the petition has been convicted of a criminal offense that was committed during the period of lifetime tracking, the court shall deny the person's petition without a hearing.

2. If the report indicates that the person filing the petition has not been convicted of a criminal offense that was committed during the period of lifetime tracking, the court shall order the person to be examined under par. (e), shall notify the department that it may submit a report under par. (f) and shall schedule a hearing on the petition to be conducted as provided under par. (g).

(e) A person filing a petition requesting termination of lifetime tracking who is entitled to a hearing under par. (d) 2. shall be examined by a person who is either a physician or a psychologist licensed under ch. 455 and who is approved by the court. The physician or psychologist who conducts an examination under this paragraph shall prepare a report of his or her examination that includes his or her opinion of whether the person petitioning for termination of lifetime tracking is a danger to the public. The physician or psychologist shall file the report of his or her examination with the court within 60 days after completing the examination, and the court shall provide copies of the report to the person filing the petition and the district attorney. The contents of the report shall be confidential until the physician or psychologist testifies at a hearing under par. (g). The person petitioning for termination of lifetime tracking shall pay the cost of an examination required under this paragraph.

(f) After it receives notification from the court under par. (d) 2., the department may prepare and submit to the court a report concerning a person who has filed a petition requesting termination of lifetime tracking. If the department prepares and submits a report under this paragraph, the report shall include information concerning the person's conduct while on lifetime tracking and an opinion as to whether lifetime tracking of the person is still necessary to protect the public. When a report prepared under this paragraph has been received by the court, the court shall, before the hearing under par. (g), disclose the contents of the report to the attorney for the person who filed the petition and to the district attorney. When the person who filed the petition is not represented by an attorney, the contents shall be disclosed to the person.

(g) A hearing on a petition requesting termination of lifetime tracking may not be conducted until the person filing the petition

has been examined and a report of the examination has been filed as provided under par. (e). At the hearing, the court shall take evidence it considers relevant to determining whether lifetime tracking should be continued because the person who filed the petition is a danger to the public. The person who filed the petition and the district attorney may offer evidence relevant to the issue of the person's dangerousness and the continued need for lifetime tracking.

(h) The court may grant a petition requesting termination of lifetime tracking if it determines after a hearing under par. (g) that lifetime tracking is no longer necessary to protect the public.

(i) If a petition requesting termination of lifetime tracking is denied after a hearing under par. (g), the person may not file a subsequent petition requesting termination of lifetime tracking until at least 5 years have elapsed since the most recent petition was denied.

(7) DEPARTMENT'S PETITION TO TERMINATE LIFETIME TRACKING.

(a) The department may file a petition requesting that a person's lifetime tracking be terminated if the person is permanently physically incapacitated. The petition shall include affidavits from 2 physicians that explain the nature of the person's permanent physical incapacitation.

(b) 1. The department shall file a petition under par. (a) with the circuit court for the county in which the person was convicted or found not guilty or not responsible by reason of mental disease or defect or, in the case of a person described in sub. (2) (b), the circuit court for the county in which the person was found to be a sexually violent person.

2. The department shall send a copy of a petition filed under subd. 1. to the district attorney responsible for prosecuting the serious sex offense that was the basis for the order of lifetime tracking or, in the case of a person described in sub. (2) (b), the agency that filed the petition under s. 980.02.

(c) Upon its own motion or upon the motion of the party to whom the petition was sent under par. (b) 2., the court may order that the person to whom the petition relates be examined by a physician who is approved by the court. The physician who conducts an examination under this paragraph shall prepare a report of his or her examination that includes his or her opinion of whether the person is permanently physically incapacitated. The physician shall file the report of his or her examination with the court within 60 days after completing the examination, and the court shall provide copies of the report to the department and the party to whom the petition was sent under par. (b) 2. The contents of the report shall be confidential until the physician testifies at a hearing under par. (d). The department shall pay the cost of an examination required under this paragraph.

(d) The court shall conduct a hearing on a petition filed under par. (b) 1., but if the court has ordered a physical examination under par. (c), the hearing may not occur until after the examination is complete and a report of the examination has been filed as provided under par. (c). At the hearing, the court shall take evidence it considers relevant to determining whether the person to whom the petition relates is permanently physically incapacitated so that he or she is not a danger to the public. The department and the party to whom the petition was sent under par. (b) 2. may offer relevant evidence regarding that issue.

(e) The court may grant a petition filed under par. (b) 1. if it determines after a hearing under par. (d) that the person to whom the petition relates is permanently physically incapacitated so that he or she is not a danger to the public.

(7m) TERMINATION IF PERSON MOVES OUT OF STATE. Notwithstanding sub. (2), if a person who is subject to being tracked under this section moves out of state, the department shall terminate the person's tracking. If the person returns to the state, the department shall reinstate the person's tracking except as provided under sub. (6) or (7).

History: 2005 a. 431; 2007 a. 20 ss. 3134m to 3165m, 9121 (6) (s).



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1200/P1

CMH: *GF*

DOA:.....Steinmetz, BBxxxx - Changes to statute requiring DOC to track sex offenders via GPS

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

1 AN ACT ...; relating to: the budget.

being tracked
being tracked
how
how
Analysis by the Legislative Reference Bureau

CORRECTIONAL SYSTEM

X
+
X
→
Current law requires DOC to maintain active lifetime global positioning system (GPS) tracking of sex offenders who have been committed as sexually violent persons (SVP) and certain sex offenders who have committed specified sex offenses against a child. Unless the tracked person has been committed as an SVP, the tracking requirement can be terminated or modified in the following ways: 1) *how* After 20 years of tracking, the tracked person may petition the court to terminate tracking; 2) DOC may petition the court to terminate tracking if the tracked person is physically incapacitated; and 3) *how* DOC may passively track, versus actively track, the person after the person completes his or her sentence, including any parole or extended supervision. This bill changes the ways the tracking requirement can be terminated or modified in the following ways: 1) *being tracked* After 20 years of tracking, the tracked person may petition DOC to terminate tracking; 2) DOC may terminate tracking of a physically incapacitated person; and 3) DOC may passively track, versus actively track, any person subject to tracking without regard to the person's supervision status.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 301.48 (1) (d) of the statutes is amended to read:

2 301.48 (1) (d) "Lifetime tracking" means global positioning system tracking
3 that is required for a person for the remainder of the person's life ~~or until terminated~~
4 ~~under sub. (2m), sub. (6), if applicable, or sub. (7) or (7m).~~ "Lifetime tracking" does
5 not include global positioning system tracking under sub. (2) (d), regardless of how
6 long it is required.

History: 2005 a. 431; 2007 a. 20 ss. 3134m to 3165m, 9121 (6) (a); 2007 a. 96; s. 13.92 (2) (i).

 ****NOTE: I moved the substantive material to s. 301.48 (2) (a) (intro.) and (b) (intro.), where it belongs.

7 **SECTION 2.** 301.48 (2) (a) (intro.) of the statutes is amended to read:

8 301.48 (2) (a) (intro.) Except as provided in ~~sub.~~ subs. (2m), (6), (7), and (7m),
9 the department shall maintain lifetime tracking of a person if any of the following
10 occurs with respect to the person on or after January 1, 2008:

History: 2005 a. 431; 2007 a. 20 ss. 3134m to 3165m, 9121 (6) (a); 2007 a. 96; s. 13.92 (2) (i).

11 **SECTION 3.** 301.48 (2) (b) (intro.) of the statutes is amended to read:

12 301.48 (2) (b) (intro.) The Except as provided in subs. (7) and (7m), the
13 department shall maintain lifetime tracking of a person if any of the following occurs
14 with respect to the person on or after January 1, 2008:

History: 2005 a. 431; 2007 a. 20 ss. 3134m to 3165m, 9121 (6) (a); 2007 a. 96; s. 13.92 (2) (i).

15 **SECTION 4.** 301.48 (2) (d) of the statutes is amended to read:

16 301.48 (2) (d) If, on or after January 1, 2008, a person is being placed on
17 probation, extended supervision, parole, or lifetime supervision for committing a sex
18 offense and par. (a) or (b) does not apply, the department may have the person tracked
19 using a global positioning system tracking device, or passive positioning system

1 tracking, as a condition of the person's probation, extended supervision, parole, or
2 lifetime supervision.

3 History: 2005 a. 431; 2007 a. 20 ss. 3134m to 3165m, 9121 (6) (a); 2007 a. 96; s. 13.92 (2) (i).

3 **SECTION 5.** 301.48 (2m) of the statutes is amended to read:

4 **301.48 (2m) PASSIVE POSITIONING SYSTEM TRACKING.** ~~If a person who is subject~~
5 ~~to lifetime tracking under sub. (2) (a) 1., 1m., 2., 2m., 3., or 3m. completes his or her~~
6 ~~sentence, including any probation, parole, or extended supervision, the~~ The
7 department may use passive positioning system tracking instead of maintaining
8 lifetime tracking to track a person who is subject to lifetime tracking under sub. (2)
9 (a) 1., 1m., 2., 2m., 3., or 3m. if the department determines that passive positioning
10 tracking is appropriate for the person.

11 History: 2005 a. 431; 2007 a. 20 ss. 3134m to 3165m, 9121 (6) (a); 2007 a. 96; s. 13.92 (2) (i).

11 **SECTION 6.** 301.48 (6) (a) of the statutes is amended to read:

12 301.48 (6) (a) Subject to par. (b), a person who is subject to lifetime tracking may
13 file a petition with the department requesting that lifetime tracking be terminated.
14 ~~A person shall file a petition requesting termination of lifetime tracking with the~~
15 ~~circuit court for the county in which the person was convicted or found not guilty or~~
16 ~~not responsible by reason of mental disease or defect.~~

17 **SECTION 7.** 301.48 (6) (b) 2. of the statutes is amended to read:

18 301.48 (6) (b) 2. A person may not file a petition requesting termination of
19 lifetime tracking earlier than 20 years after the date on which the period of lifetime
20 tracking began. If a person files a petition requesting termination of lifetime
21 tracking at any time earlier than 20 years after the date on which the period of
22 lifetime tracking began, the ~~court~~ department shall deny the petition without a
23 hearing.

24 History: 2005 a. 431; 2007 a. 20 ss. 3134m to 3165m, 9121 (6) (a); 2007 a. 96; s. 13.92 (2) (i).

24 **SECTION 8.** 301.48 (6) (c) of the statutes is amended to read:

1 301.48 (6) (c) Upon receiving a petition requesting termination of lifetime
2 tracking, the court department shall send a copy of the petition to the district
3 attorney responsible for prosecuting the serious sex offense that was the basis for the
4 order of lifetime tracking. Upon receiving the copy of the petition, the district
5 attorney shall conduct a criminal history record search to determine whether the
6 person has been convicted of a criminal offense that was committed during the period
7 of lifetime tracking. No later than 30 days after the date on which he or she receives
8 the copy of the petition, the district attorney shall report the results of the criminal
9 history record search to the court department and may provide a written response
10 to the petition.

11 **SECTION 9.** 301.48 (6) (d) of the statutes is amended to read:

12 301.48 (6) (d) After reviewing a report submitted under par. (c) concerning the
13 results of a criminal history record search, the court department shall do whichever
14 of the following is applicable:

15 1. If the report indicates that the person filing the petition has been convicted
16 of a criminal offense that was committed during the period of lifetime tracking, the
17 court department shall deny the person's petition without a hearing.

18 2. If the report indicates that the person filing the petition has not been
19 convicted of a criminal offense that was committed during the period of lifetime
20 tracking, the court department shall order examine the person ~~to be examined~~ under
21 par. (e), ~~shall notify the department that it may submit a report under par. (f) and~~
22 shall schedule a hearing on the petition to be conducted as provided under par. (g).

23 **SECTION 10.** 301.48 (6) (e) of the statutes is amended to read:

24 301.48 (6) (e) A person filing a petition requesting termination of lifetime
25 tracking who is entitled to a hearing under par. (d) 2. shall be examined by a person

1 who is either a physician or a psychologist licensed under ch. 455 and who is
2 approved by the court department. The physician or psychologist who conducts an
3 examination under this paragraph shall prepare a report of his or her examination
4 that includes his or her opinion of whether the person petitioning for termination of
5 lifetime tracking is a danger to the public. The physician or psychologist shall file
6 the report of his or her examination with the court department within 60 days after
7 completing the examination, and the court department shall provide copies of the
8 report to the person filing the petition and the district attorney. The contents of the
9 report shall be confidential until the physician or psychologist testifies at a hearing
10 under par. (g). The person petitioning for termination of lifetime tracking shall pay
11 the cost of an examination required under this paragraph.

12 **SECTION 11.** 301.48 (6) (f) of the statutes is amended to read:

13 301.48 (6) (f) After it ~~receives notification from the court~~ the department
14 schedules a hearing under par. (d) 2., the department may prepare and submit to the
15 court a report concerning ~~a~~ the person who has filed a petition requesting
16 termination of lifetime tracking. If the department prepares and submits a report
17 under this paragraph, the report shall include any response under par. (c) from the
18 district attorney, information concerning the person's conduct while on lifetime
19 tracking, and an opinion as to whether lifetime tracking of the person is still
20 necessary to protect the public. ~~When~~ If the department prepares a report prepared
21 under this paragraph has been received by the court, the court it shall, before the
22 hearing under par. (g), disclose the contents of the report to the attorney for the
23 person who filed the petition and to the district attorney. When the person who filed

1 the petition is not represented by an attorney, the contents shall be disclosed to the
2 person.

3 History: 2005 a. 431; 2007 a. 20 ss. 3134m to 3165m, 9121 (6) (a); 2007 a. 96; s. 13.92 (2) (i).

SECTION 12. 301.48 (6) (g) of the statutes is amended to read:

4 301.48 (6) (g) A hearing on a petition requesting termination of lifetime
5 tracking may not be conducted until the person filing the petition has been examined
6 and a report of the examination has been filed as provided under par. (e). At the
7 hearing, the court department shall ~~take evidence~~ consider factors it considers
8 relevant to determining whether lifetime tracking should be continued because the
9 person who filed the petition is a danger to the public. The person who filed the
10 petition and the district attorney may offer evidence material relevant to the issue
11 of the person's dangerousness and the continued need for lifetime tracking.

12 History: 2005 a. 431; 2007 a. 20 ss. 3134m to 3165m, 9121 (6) (a); 2007 a. 96; s. 13.92 (2) (i).

SECTION 13. 301.48 (6) (h) of the statutes is amended to read:

13 301.48 (6) (h) The court department may ~~grant a petition requesting~~
14 ~~termination of terminate~~ lifetime tracking if it determines after a hearing under par.
15 (g) that lifetime tracking is no longer necessary to protect the public.

16 History: 2005 a. 431; 2007 a. 20 ss. 3134m to 3165m, 9121 (6) (a); 2007 a. 96; s. 13.92 (2) (i).

SECTION 14. 301.48 (7) (title) and (a) of the statutes are amended to read:

17 301.48 (7) (title) ~~DEPARTMENT'S PETITION~~ DEPARTMENT TO TERMINATE LIFETIME
18 TRACKING FOR INCAPACITATED PERSONS. (a) The department may ~~file a petition~~
19 ~~requesting that, subject to pars. (am), (bm), (d), and (e), terminate~~ a person's lifetime
20 tracking ~~be terminated~~ if the person is permanently physically incapacitated. The
21 petition shall include

22 (am) The department may not terminate a person's lifetime tracking without
23 affidavits from 2 physicians that explain the nature of the person's permanent
24 physical incapacitation.

1 **SECTION 15.** 301.48 (7) (b) 1. of the statutes is repealed.

2 **SECTION 16.** 301.48 (7) (b) 2. of the statutes is renumbered 301.48 (7) (bm) 1.
3 and amended to read:

4 301.48 (7) (bm) 1. The department shall ~~send a copy of a petition filed under~~
5 ~~subd. 1. to~~ notify the district attorney responsible for prosecuting the serious sex
6 offense that was the basis for the order of lifetime tracking or, in the case of a person
7 described in sub. (2) (b), the agency that filed the petition under s. 980.02 that the
8 the person's lifetime tracking may be terminated due to permanent physical
9 incapacity.

History: 2005 a. 431; 2007 a. 20 ss. 3134m to 3165m, 9121 (6) (a); 2007 a. 96; s. 13.92 (2) (i).

10 **SECTION 17.** 301.48 (7) (c) of the statutes is renumbered 301.48 (7) (bm) 2. and
11 amended to read:

12 301.48 (7) (bm) 2. Upon ~~its own motion or upon the motion of the party to whom~~
13 ~~the petition was sent~~ a request for another examination from the person who was
14 notified under par. (b) 2. subd. 1., the court may order that the person to whom the
15 petition relates department shall have the person whose lifetime tracking is subject
16 to termination be examined by ~~a~~ another physician who is approved by the court.
17 The physician who conducts an examination under this paragraph shall prepare a
18 report of his or her examination that includes his or her opinion of whether the
19 person is permanently physically incapacitated. The physician shall file the report
20 of his or her examination with the court department within 60 days after completing
21 the examination, and the court department shall provide copies of the report to the
22 ~~department and the party to whom the petition was sent~~ who was notified under par.
23 ~~(b) 2~~ subd. 1. The contents of the report shall be confidential until the physician

testifies at a hearing under par. (d). The department shall pay the cost of an examination required under this paragraph subdivision.

History: 2005 a. 431; 2007 a. 20 ss. 3134m to 3165m, 9121 (6) (a); 2007 a. 96; s. 13.92 (2) (i).

SECTION 18. 301.48 (7) (d) of the statutes is amended to read:

301.48 (7) (d) The court department shall conduct a hearing ~~on a petition filed~~ under par. (b) 1. to determine if a person who is incapacitated should have his or her lifetime tracking terminated, but if the court has ordered ~~a~~ ^{plaintiff's} a physical examination is required under par. (e) (bm) 2., the hearing may not occur until after the examination is complete and a report of the examination has been filed as provided under par. (e) (bm) 2. At the hearing, the court department shall ~~take evidence it~~ ^{finds} consider factors it considers relevant to determining whether the person to whom the petition relates is permanently physically incapacitated so that he or she is not a danger to the public. The ~~department and the party to whom the petition was sent~~ ^{plain} under par. (b) 2 (bm) 1. may offer relevant evidence testimony regarding that issue.

SECTION 19. 301.48 (7) (e) of the statutes is amended to read:

301.48 (7) (e) The ~~court may grant a petition filed under par. (b) 1.~~ department may terminate lifetime tracking if it the department determines after a hearing under par. (d) that the person ~~to whom the petition relates~~ who is the subject of the hearing is permanently physically incapacitated so that he or she is not a danger to the public.

History: 2005 a. 431; 2007 a. 20 ss. 3134m to 3165m, 9121 (6) (a); 2007 a. 96; s. 13.92 (2) (i).

SECTION 20. 301.48 (7m) of the statutes is amended to read:

301.48 (7m) TERMINATION IF PERSON MOVES OUT OF STATE. ~~Notwithstanding sub.~~ (2), if If a person who is subject to being tracked under this section moves out of state, the department shall terminate the person's tracking. If the person returns to the

1 state, the department shall reinstate the person's tracking except as provided under
2 sub. (6) or (7).

3 **History:** 2005 a. 431; 2007 a. 20 ss. 3134m to 3165m, 9121 (6) (a); 2007 a. 96; s. 13.92 (2) (i).

3 **SECTION 21. 801.50 (5b) of the statutes is created to read:**

4 801.50 (5b) Venue of an action for certiorari to review a decision by the
5 department of corrections whether to terminate global positioning system tracking
6 under s. 301.48 (6) or (7) shall be in ^{the} county in which the tracked person was last
7 convicted, or found not guilty by reason of mental disease or defect, of the offense that
8 was the basis for the order of lifetime tracking or in which the tracked person was
9 determined to be a sexually violent person.

10 **SECTION 9311. Initial applicability; Corrections.**

11 (1) PETITION TO TERMINATE LIFETIME TRACKING. The treatment of section 301.48
12 (6) (a), (b) 2., (c), (d), (e), (f), (g), and (h) of the statutes first applies to petitions filed
13 on the effective date of this subsection.

14 (END)

Hanaman, Cathlene

From: Wavrunek, Leah J - DOA [Leah.Wavrunek@wisconsin.gov]
Sent: Friday, January 09, 2009 2:15 PM
To: Hanaman, Cathlene
Subject: Changes to LRB-1200/P1

Hi Cathlene,

Below are the changes to the draft regarding GPS tracking of sex offenders.

1. We are not going to change the petition for termination of GPS tracking. We will stay with current law.
2. DOC can use discretion to move people from active to passive tracking only after the offenders have had active tracking for 12 months.

Please let me know if you have any questions.

Thanks,
leah

Leah Wavrunek
State Budget Office
Ph: (608) 267-0370
F: (608) 267-0372
leah.wavrunek@wisconsin.gov

01/09/2009



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1200/P1

CMH:kjf:rs

DOA:.....Steinmetz, BBxxxx - Changes to statute requiring DOC to track sex offenders via GPS

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

CORRECTIONAL SYSTEM

Current law requires DOC to maintain active lifetime global positioning system (GPS) tracking of sex offenders who have been committed as sexually violent persons (SVP) and certain sex offenders who have committed specified sex offenses against a child. Unless the tracked person has been committed as an SVP, the tracking requirement can be terminated or modified in the following ways: 1) after 20 years of being tracked, the tracked person may petition the court to terminate tracking; 2) DOC may petition the court to terminate tracking if the tracked person is physically incapacitated; and 3) DOC may passively track, versus actively track, the person after the person completes his or her sentence, including any parole or extended supervision. This bill changes how the tracking requirement can be terminated or modified in the following ways: 1) after 20 years of being tracked, the tracked person may petition DOC to terminate tracking; 2) DOC may terminate tracking of a physically incapacitated person; and 3) DOC may passively track, versus actively track, any person subject to tracking without regard to the person's supervision status.

Under this bill,

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

✓ 1 **SECTION 1.** 301.48 (1) (d) of the statutes is amended to read:

2 301.48 (1) (d) "Lifetime tracking" means global positioning system tracking
3 that is required for a person for the remainder of the person's life ~~or until terminated~~
4 ~~under sub. (2m), sub. (6), if applicable, or sub. (7) or (7m).~~ "Lifetime tracking" does
5 not include global positioning system tracking under sub. (2) (d), regardless of how
6 long it is required.

****NOTE: I moved the substantive material to s. 301.48 (2) (a) (intro.) and (b) (intro.), where it belongs.

✓ 7 **SECTION 2.** 301.48 (2) (a) (intro.) of the statutes is amended to read:

8 301.48 (2) (a) (intro.) Except as provided in ~~sub.~~ subs. (2m), (6), (7), and (7m),
9 the department shall maintain lifetime tracking of a person if any of the following
10 occurs with respect to the person on or after January 1, 2008:

✓ 11 **SECTION 3.** 301.48 (2) (b) (intro.) of the statutes is amended to read:

12 301.48 (2) (b) (intro.) The Except as provided in subs. (7) and (7m), the
13 department shall maintain lifetime tracking of a person if any of the following occurs
14 with respect to the person on or after January 1, 2008:

15 **SECTION 4.** 301.48 (2) (d) of the statutes is amended to read:

16 301.48 (2) (d) If, on or after January 1, 2008, a person is being placed on
17 probation, extended supervision, parole, or lifetime supervision for committing a sex
18 offense and par. (a) or (b) does not apply, the department may have the person tracked
19 using a global positioning system tracking device, or passive positioning system

1 tracking, as a condition of the person's probation, extended supervision, parole, or
2 lifetime supervision.

3 *still wanted flexibility here -- please review and see if you agree.*
4 **SECTION 5.** 301.48 (2m) of the statutes is amended to read:

5 301.48 (2m) PASSIVE POSITIONING SYSTEM TRACKING. If a person who is subject
6 to lifetime tracking under sub. (2) (a) 1., 1m., 2., 2m., 3., or 3m. completes his or her
7 sentence, including any probation, parole, or extended supervision, the The
8 department may use passive positioning system tracking instead of maintaining
9 ~~lifetime tracking~~ *global positioning system tracking* to track a person who is subject to lifetime tracking under sub. (2)
10 (a) 1., 1m., 2., 2m., 3., or 3m. if the department determines that passive positioning
11 tracking is appropriate for the person *and if the person has been subject to*

12 **SECTION 6.** 301.48 (6) (a) of the statutes is amended to read:

13 301.48 (6) (a) Subject to par. (b), a person who is subject to lifetime tracking may
14 file a petition with the department requesting that lifetime tracking be terminated.
15 ~~A person shall file a petition requesting termination of lifetime tracking with the~~
16 ~~circuit court for the county in which the person was convicted or found not guilty or~~
17 ~~not responsible by reason of mental disease or defect.~~

18 **SECTION 7.** 301.48 (6) (b) 2. of the statutes is amended to read:

19 301.48 (6) (b) 2. A person may not file a petition requesting termination of
20 lifetime tracking earlier than 20 years after the date on which the period of lifetime
21 tracking began. If a person files a petition requesting termination of lifetime
22 tracking at any time earlier than 20 years after the date on which the period of
23 lifetime tracking began, the ~~court~~ department shall deny the petition without a
24 hearing.

SECTION 8. 301.48 (6) (c) of the statutes is amended to read:

tracking system tracking for at least 12 months

1 301.48 (6) (c) Upon receiving a petition requesting termination of lifetime
2 tracking, the ~~court~~ department shall send a copy of the petition to the district
3 attorney responsible for prosecuting the serious sex offense that was the basis for the
4 order of lifetime tracking. Upon receiving the copy of the petition, the district
5 attorney shall conduct a criminal history record search to determine whether the
6 person has been convicted of a criminal offense that was committed during the period
7 of lifetime tracking. No later than 30 days after the date on which he or she receives
8 the copy of the petition, the district attorney shall report the results of the criminal
9 history record search to the ~~court~~ department and may provide a written response
10 to the petition.

11 **SECTION 9.** 301.48 (6) (d) of the statutes is amended to read:

12 301.48 (6) (d) After reviewing a report submitted under par. (c) concerning the
13 results of a criminal history record search, the ~~court~~ department shall do whichever
14 of the following is applicable:

15 1. If the report indicates that the person filing the petition has been convicted
16 of a criminal offense that was committed during the period of lifetime tracking, the
17 ~~court~~ department shall deny the person's petition without a hearing.

18 2. If the report indicates that the person filing the petition has not been
19 convicted of a criminal offense that was committed during the period of lifetime
20 tracking, the ~~court~~ department shall ~~order examine~~ examine the person to be examined under
21 par. (e), ~~shall notify the department that it may submit a report under par. (f) and~~
22 shall schedule a hearing on the petition to be conducted as provided under par. (g).

23 **SECTION 10.** 301.48 (6) (e) of the statutes is amended to read:

24 301.48 (6) (e) A person filing a petition requesting termination of lifetime
25 tracking who is entitled to a hearing under par. (d) 2. shall be examined by a person

1 who is either a physician or a psychologist licensed under ch. 455 and who is
2 approved by the ~~court~~ department. The physician or psychologist who conducts an
3 examination under this paragraph shall prepare a report of his or her examination
4 that includes his or her opinion of whether the person petitioning for termination of
5 lifetime tracking is a danger to the public. The physician or psychologist shall file
6 the report of his or her examination with the ~~court~~ department within 60 days after
7 completing the examination, and the ~~court~~ department shall provide copies of the
8 report to the person filing the petition and the district attorney. The contents of the
9 report shall be confidential until the physician or psychologist testifies at a hearing
10 under par. (g). The person petitioning for termination of lifetime tracking shall pay
11 the cost of an examination required under this paragraph.

12 **SECTION 11.** 301.48 (6) (f) of the statutes is amended to read:

13 301.48 (6) (f) After it ~~receives notification from the court~~ the department
14 schedules a hearing under par. (d) 2., the department may prepare and submit to the
15 ~~court~~ a report concerning ~~a~~ the person who has filed a petition requesting
16 termination of lifetime tracking. If the department prepares and submits a report
17 under this paragraph, the report shall include any response under par. (c) from the
18 district attorney, information concerning the person's conduct while on lifetime
19 tracking, and an opinion as to whether lifetime tracking of the person is still
20 necessary to protect the public. ~~When~~ If the department prepares a report prepared
21 under this paragraph has been received by the court, the court it shall, before the
22 hearing under par. (g), disclose the contents of the report to the attorney for the
23 person who filed the petition and to the district attorney. ~~When the person who filed~~
24 ~~the petition is not represented by an attorney, the contents shall be disclosed to the~~
25 person.

1 **SECTION 12.** 301.48 (6) (g) of the statutes is amended to read:

2 301.48 (6) (g) A hearing on a petition requesting termination of lifetime
3 tracking may not be conducted until the person filing the petition has been examined
4 and a report of the examination has been filed as provided under par. (e). At the
5 hearing, the court department shall ~~take evidence~~ consider factors it considers
6 relevant to determining whether lifetime tracking should be continued because the
7 person who filed the petition is a danger to the public. The person who filed the
8 petition and the district attorney may offer evidence relevant to the issue of the
9 person's dangerousness and the continued need for lifetime tracking.

10 **SECTION 13.** 301.48 (6) (h) of the statutes is amended to read:

11 301.48 (6) (h) The court department may ~~grant a petition requesting~~
12 ~~termination of~~ terminate lifetime tracking if it determines after a hearing under par.
13 (g) that lifetime tracking is no longer necessary to protect the public.

14 **SECTION 14.** 301.48 (7) (title) and (a) of the statutes are amended to read:

15 301.48 (7) (title) ~~DEPARTMENT'S PETITION~~ DEPARTMENT TO TERMINATE LIFETIME
16 TRACKING FOR INCAPACITATED PERSONS. (a) The department may ~~file a petition~~
17 ~~requesting that, subject to pars. (am), (bm), (d), and (e), terminate~~ a person's lifetime
18 tracking ~~be terminated~~ if the person is permanently physically incapacitated. The
19 petition shall include

20 (am) The department may not terminate a person's lifetime tracking without
21 affidavits from 2 physicians that explain the nature of the person's permanent
22 physical incapacitation.

23 **SECTION 15.** 301.48 (7) (b) 1. of the statutes is repealed.

24 **SECTION 16.** 301.48 (7) (b) 2. of the statutes is renumbered 301.48 (7) (bm) 1.
25 and amended to read:

1 301.48 (7) (bm) 1. The department shall send a copy of a petition filed under
2 ~~subd. 1. to~~ notify the district attorney responsible for prosecuting the serious sex
3 offense that was the basis for the order of lifetime tracking or, in the case of a person
4 described in sub. (2) (b), the agency that filed the petition under s. 980.02 that the
5 the person's lifetime tracking may be terminated due to permanent physical
6 incapacity.

7 **SECTION 17.** 301.48 (7) (c) of the statutes is renumbered 301.48 (7) (bm) 2. and
8 amended to read:

9 301.48 (7) (bm) 2. Upon its own motion or upon the motion of the party to whom
10 the petition was sent a request for another examination from the person who was
11 notified under ~~par. (b) 2. subd. 1.,~~ the court may order that the person to whom the
12 petition relates department shall have the person whose lifetime tracking is subject
13 to termination be examined by ~~a~~ another physician who is approved by the court.
14 The physician who conducts an examination under this paragraph shall prepare a
15 report of his or her examination that includes his or her opinion of whether the
16 person is permanently physically incapacitated. The physician shall file the report
17 of his or her examination with the court department within 60 days after completing
18 the examination, and the court department shall provide copies of the report to the
19 department and the party to whom the petition was sent who was notified under par.
20 ~~(b) 2 subd. 1.~~ The contents of the report shall be confidential until the physician
21 testifies at a hearing under par. (d). The department shall pay the cost of an
22 examination required under this paragraph subdivision.

23 **SECTION 18.** 301.48 (7) (d) of the statutes is amended to read:

24 301.48 (7) (d) The court department shall conduct a hearing ~~on a petition filed~~
25 under par. (b) 1. to determine if a person who is incapacitated should have his or her

1 lifetime tracking terminated, but if the court has ordered a physical examination is
2 required under par. (e) (bm) 2., the hearing may not occur until after the examination
3 is complete and a report of the examination has been filed as provided under par. (e)
4 (bm) 2. At the hearing, the court department shall ~~take evidence it considers~~
5 consider factors it finds relevant to determining whether the person to whom the
6 petition relates is permanently physically incapacitated so that he or she is not a
7 danger to the public. The ~~department and the party~~ to whom the petition was sent
8 under par. ~~(b) 2.~~ (bm) 1. may offer relevant evidence regarding that issue.

9 **SECTION 19.** 301.48 (7) (e) of the statutes is amended to read:

10 301.48 (7) (e) ~~The court may grant a petition filed under par. (b) 1.~~ department
11 may terminate lifetime tracking if it the department determines after a hearing
12 under par. (d) that the person ~~to whom the petition relates~~ who is the subject of the
13 hearing is permanently physically incapacitated so that he or she is not a danger to
14 the public.

15 **SECTION 20.** 301.48 (7m) of the statutes is amended to read:

16 301.48 (7m) **TERMINATION IF PERSON MOVES OUT OF STATE.** ~~Notwithstanding sub.~~
17 ~~(2), if~~ If a person who is subject to being tracked under this section moves out of state,
18 the department shall terminate the person's tracking. If the person returns to the
19 state, the department shall reinstate the person's tracking except as provided under
20 sub. (6) or (7).

21 **SECTION 21.** 801.50 (5b) of the statutes is created to read:

22 801.50 (5b) Venue of an action for certiorari to review a decision by the
23 department of corrections whether to terminate global positioning system tracking
24 under s. 301.48 (6) ~~or (7)~~ shall be in the county in which the tracked person was last
25 convicted, or found not guilty by reason of mental disease or defect, of the offense that

1 was the basis for the order of lifetime tracking or in which the tracked person was
2 determined to be a sexually violent person.

3 **SECTION 9311. Initial applicability; Corrections.**

4 (1) PETITION TO TERMINATE LIFETIME TRACKING. The treatment of section 301.48
5 (6) (a), (b) 2., (c), (d), (e), (f), (g), and (h) of the statutes first applies to petitions filed
6 on the effective date of this subsection.

7 (END)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1200/P2

CMH:kjf:jf

P3

note

DOA:.....Steinmetz, BB0311 - Changes to statute requiring DOC to track sex offenders via GPS

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

Don't Get

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

CORRECTIONAL SYSTEM

Current law requires DOC to maintain active lifetime global positioning system (GPS) tracking of sex offenders who have been committed as sexually violent persons (SVP) and certain sex offenders who have committed specified sex offenses against a child. Unless the tracked person has been committed as an SVP, the tracking requirement can be terminated or modified in the following ways: 1) after 20 years of being tracked, the tracked person may petition the court to terminate tracking; 2) DOC may petition the court to terminate tracking if the tracked person is physically incapacitated; and 3) DOC may passively track, versus actively track, the person after the person completes his or her sentence, including any parole or extended supervision. Under this bill, DOC may passively track, versus actively track, any person subject to tracking without regard to the person's supervision status if DOC determines that passive positioning tracking is appropriate for the person and the person has been subject to active tracking for at least 12 months.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

✓
1 **SECTION 1.** 301.48 (1) (d) of the statutes is amended to read:

2 301.48 (1) (d) "Lifetime tracking" means global positioning system tracking
3 that is required for a person for the remainder of the person's life ~~or until terminated~~
4 ~~under sub. (2m), sub. (6), if applicable, or sub. (7) or (7m).~~ "Lifetime tracking" does
5 not include global positioning system tracking under sub. (2) (d), regardless of how
6 long it is required.

✓
7 **SECTION 2.** 301.48 (2) (a) (intro.) of the statutes is amended to read:

8 301.48 (2) (a) (intro.) Except as provided in ~~sub.~~ subs. (2m), (6), (7), and (7m),
9 the department shall maintain lifetime tracking of a person if any of the following
10 occurs with respect to the person on or after January 1, 2008:

✓
11 **SECTION 3.** 301.48 (2) (b) (intro.) of the statutes is amended to read:

12 301.48 (2) (b) (intro.) The Except as provided in subs. (7) and (7m), the
13 department shall maintain lifetime tracking of a person if any of the following occurs
14 with respect to the person on or after January 1, 2008:

✓
15 **SECTION 4.** 301.48 (2) (d) of the statutes is amended to read:

16 301.48 (2) (d) If, on or after January 1, 2008, a person is being placed on
17 probation, extended supervision, parole, or lifetime supervision for committing a sex
18 offense and par. (a) or (b) does not apply, the department may have the person tracked
19 using a global positioning system tracking device, or passive positioning system
20 tracking, as a condition of the person's probation, extended supervision, parole, or
21 lifetime supervision.

91
****NOTE: Leah, I think you still wanted flexibility here--please review and see if
you agree.

✓
22 **SECTION 5.** 301.48 (2m) of the statutes is amended to read:

1 301.48 (2m) PASSIVE POSITIONING SYSTEM TRACKING. ~~If a person who is subject~~
2 ~~to lifetime tracking under sub. (2) (a) 1., 1m., 2., 2m., 3., or 3m. completes his or her~~
3 ~~sentence, including any probation, parole, or extended supervision, the~~ The
4 department may use passive positioning system tracking instead of maintaining
5 lifetime tracking global positioning system tracking to track a person who is subject
6 to lifetime tracking under sub. (2) (a) 1., 1m., 2., 2m., 3., or 3m. if the department
7 determines that passive positioning tracking is appropriate for the person and if the
8 person has been subject to global positioning system tracking for at least 12 months.

9 [✓]
SECTION 6. 301.48 (7m) of the statutes is amended to read:

10 301.48 (7m) TERMINATION IF PERSON MOVES OUT OF STATE. ~~Notwithstanding sub.~~
11 ~~(2), if~~ If a person who is subject to being tracked under this section moves out of state,
12 the department shall terminate the person's tracking. If the person returns to the
13 state, the department shall reinstate the person's tracking except as provided under
14 sub. (6) or (7).

15 (END)

Date

LRB-1200/p3dn
CMH:kjf

Leah:

This redraft removes a note under the
amendment of s. 301.48 (2) (d).

CMH

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1200/P3dn
CMH:kjf:jf

February 5, 2009

Leah:

This redraft removes a note under the amendment of s. 301.48 (2) (d).

Cathlene Hanaman
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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1200/P3
CMH:kjf:jf

DOA:.....Steinmetz, BB0311 - Changes to statute requiring DOC to track sex offenders via GPS

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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25 ~~sentence, including any probation, parole, or extended supervision, the~~ The

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3 to lifetime tracking under sub. (2) (a) 1., 1m., 2., 2m., 3., or 3m. if the department
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7 301.48 **(7m)** TERMINATION IF PERSON MOVES OUT OF STATE. ~~Notwithstanding sub.~~
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9 the department shall terminate the person's tracking. If the person returns to the
10 state, the department shall reinstate the person's tracking except as provided under
11 sub. (6) or (7).

12 (END)